

In the Matter of License No. A-54803
ISSUED TO: ORIEN GEORGE OAKLEAF

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

893

ORLEN GEORGE OAKLEAF

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 23 May 1955, an Examiner of the United States Coast Guard at Panama City, Florida, suspended License A-54803 issued to Orlen George Oakleaf upon finding him guilty of misconduct based upon one specification alleging in substance that while serving as operator of the American Motorboat GRACIE RAE under authority of the license above described, on or about 9 April 1955, while said vessel was navigating in the vicinity of the passenger motor QUEEN OF QUEENS, near St. Andrew dock, he operated the boat in an unsafe manner and at excessive speed while carrying passengers for hire.

Two other specifications of misconduct were dismissed by the Examiner and are of no concern here.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own choice, Appellant acted as his own counsel. He entered a plea of "not guilty" to the charge and specification preferred against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence on the matters of the specification the testimony of two witnesses, Alfred R. Holley, operator of QUEEN OF QUEENS, and Donald M. Morrell, operator of M/B JUDY BETH.

In defense, Appellant offered in evidence his sworn testimony and that of George W. Walker, deck hand aboard GRACIE RAE.

At the conclusion of the hearing, having heard the argument of the Investigating Officer (Appellant waived argument) and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his decision and concluded that the charge and specification had been proved. He then entered the

order suspending Appellant's License No. A-54803 for a period of fifteen months. This period incorporated a suspension, previously ordered by an Examiner, after a finding that probation had been violated.

BASES OF APPEAL

Appellant urges seven points on appeal, substantially as follows:

1. the captain of QUEEN OF QUEENS should have sounded a danger signal if he suspected danger;
2. there is conflict of testimony as to the "washing of the deck" of QUEEN OF QUEENS, and Appellant denies that he "almost ran QUEEN OF QUEENS on the lighted buoy";
3. there was no evidence of the speed of QUEEN OF QUEENS;
4. there was variance in the testimony with regard to the lateral distance between the boats;
5. the operator of QUEEN OF QUEENS has admitted, extra-judicially, that "we were after that boat";
6. Appellant did not have counsel at the hearing and was so deprived of possible testimony from passengers, since dispersed;
- 7 this employment is Appellant's sole source of support for self and family.

APPEARANCE: Jones and Harrell, Pensacola, Florida, by Joe J. Harrell, Esquire, of Counsel.

OPINION

It is believed that Appellant's points numbered "2" and "4" have merit, necessitating the opinions which shall follow and the action to be taken. However, in order that matters raised here need not be raised again, disposition is first made of the other points in order.

1. A failure of one party to sound a danger signal will not excuse proved misconduct on the part of another.

3. The record does contain evidence of the speed of QUEEN OF QUEENS (R-16).

5. Determination of the case will be on the record and not on alleged off-the-record admissions.

6. Appellant was fully advised of his rights to counsel, as well as of his other rights, both by the Examiner at the hearing and by the Investigating Officer five days earlier. He was, at every stage, given opportunity to introduce whatever evidence he wished.

7. If Appellant was guilty of an offense involving unsafe operation of a passenger-carrying motorboat, especially in view of his prior record, the order is not considered excessive despite the fact that operating such boats is his sole source of income.

As to Appellant's points "2" and "4", examination of the record causes considerable difficulty. A mere variance in testimony is, of course, not sufficient to require review of an Examiner's findings. But on the state of this record, the findings are considered inadequate and the variances raised in the appeal are matters requiring specific resolution.

The Examiner's findings on the specification are "that Orlen George Oakleaf, while serving as aforesaid, did, on or about 9 April 1955 while navigating in the vicinity of the passenger M/B QUEEN OF QUEENS, near St. Andrew Dock, operate his boat in an unsafe manner and at excessive speed while carrying passengers for hire." These are ultimate findings and amount to the same as finding the specification proved.

The Opinion of the Examiner with respect to the matter of this specification is set out in full:

"As to the second specification, operating the M/B GRACIE RAE at an excessive speed, the record clearly shows this to be the fact, Captain A. K. Holley, motorboat operator of the M/B QUEEN OF QUEENS testified that about five o'clock in the evening on 9 April 1955 as he was returning to his dock he observed the M/B GRACIE RAE coming up on his stern and pass him about 25 to 45 feet off at a speed of about 12 or 13 knots. That the swells created by the M/B GRACIE RAE so proceeding washed his deck from midships to stern, putting six inches of water thereon for a distance of about thirty-feet, and almost ran him on the lighted buoy. Mr. Oakleaf did not deny what Captain A. K. Holley so stated, but, said that he did slow down to the point where he thought it was safe navigation by the M/B QUEEN OF QUEENS. The second specification, on my view of the record, was held proved."

Appellant's entire testimony on this matter is found at R-44 in answer to Examiner's Question 2, but evidence amounting to denial was introduced by Appellant through the testimony of Walker (R. 42, 43).

It is first noted that Appellant twice admitted during the proceeding that he had been proceeding at "excessive speed." However, speed is excessive according to the circumstances and Appellant's denial of the alleged circumstances leaves the question one to be resolved by the Examiner on specific findings.

As to the circumstances, the record raises questions which are not resolved in the Findings or Opinion. The only attempt at identification of the place of the occurrence is in the testimony of the witness Holley, ". . . she passed on my port side between this red light and this nun buoy, the numbers I don't remember . . . "(R-15). This witness refers several times to a "light". The testimony of the witness Walker refers to two buoys (R-42). the Examiner refers to a "lighted buoy."

An examination of C. and G. S. Chart #489 raises a belief that the aids to navigation referred to are Buena Vista Shoal Light (5539-6857, Light List, Atlantic Coast, 1955) and Buena Vista Shoal Buoy "6". The light is set upon a dolphin, the normal size of which, in this area, is ten feet square.

The testimony of Holley then appears to indicate that his boat was to the right ("inside") of the dolphin while GRACIE RAE was outside the dolphin, between the light and the nun buoy. (R-16). Still, his testimony is that GRACIE RAE "almost run me on the light ." (R-16). This would be an important factor in determination of unsafe operation more specific findings on this matter are desirable.

In connection with this, other matters appear that render further findings necessary. If Buena Vista Shoal Light be the one in question, the witness Holley's estimates of distance will bear scrutiny by the Examiner. For example, the distance from the pier was given by Holley as being under 500 feet (R-16) while the distance from Buena Vista Shoal Light to the nearest pier marked upon the chart is 2100 feet. Similarly, this witness estimated the distance from the light to the nun buoy as 75 feet, while the charted distance from light to buoy is over 270 feet. On review, the Examiner may well consider these factors in arriving at findings as to the distance QUEEN OF QUEENS passed inside the light land as to the distance off of GRACIE RAE.

On the state of the record, the Examiner's Opinion is inadequate to buttress the Findings of Fact. Further review of the

record by the Examiner may enable him, in the light of the comments herein and on considering the reliability and credibility of the witnesses, to make adequate specific findings either to support the specification or require its dismissal. Additional evidence may be found desirable by the Examiner to resolve the issue.

In reconsidering, the Examiner may also give consideration to the question of Appellant's intent concerning which no finding was made and no opinion expressed. If the ultimate facts in the specification again be found established, the question of whether Appellant's action was misconduct or negligence should be considered and, if the findings so require, an amendment of the Charge may be made.

ORDER

The order of the Examiner dated at Panama City, Florida, on 23 May 1955 is VACATED and the Findings on the Charge and Specification are SET ASIDE. The case is REMANDED to the Examiner for further proceedings not inconsistent herewith.

J. A. Hirshfreed
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 22nd day of May, 1956.